

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2263 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

H.J. BAVA

Versus

STATE OF GUJARAT

Appearance:

None present for Petitioner

MS PS PARMAR for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/06/97

ORAL JUDGEMENT

In this case, the arguments of the counsel for the petitioner were heard on 24th June, 1997, and he has completed his arguments.

The counsel for the respondents after making her submissions on the said date prayed for grant of time to take instructions in the matter and this petition had been adjourned to today. Today the counsel for the

respondents submit that she has not received instructions and she prays for further grant of time. No further indulgence is required to be given. This is the matter of the year 1985 and though more than 12 years have passed, the respondents have even not cared to file reply to the Special Civil Application. The prayer made by the counsel for the respondents is declined.

The petitioner, a Mukhiya Shevika, working in the Panchayat department of the Government of Gujarat, filed this Special Civil Application and prayer has been made for direction to the respondents to consider her case for promotion to the post of Gujarat Vikas Seva Varg-II equivalent to the post of Taluka Development Officer with her all rights and benefits from the date of passing of the order dated 5th January, 1985. Under the order dated 5th January, 1985, many juniors to the petitioner have been given promotion to the post of Gujarat Vikas Seva Varg-II. The petitioner entered in the service of the Panchayat department as Mukhiya Shevika on 11th January, 1960, but still she continues on the very post on which she has been appointed. For all these years i.e. about 27 years she did not get any promotion. It has been given out by the petitioner that in her service record though there was no adversity, but purposely to deny him promotion, adverse remarks have been communicated to her vide memo dated 24th March, 1982 for the year 1977-78. Similarly, vide memo dated 24th March, 1982, the adverse remarks were communicated to the petitioner for the period from 1st April, 1978 to 17th September, 1978.

One of the contentions raised by the counsel for the petitioner is that these adverse remarks could not have been taken into consideration for denial of the promotion to the petitioner, as the same have been communicated to her after more than four years. These facts have not been disputed by the respondents by filing any reply to this Special Civil Application. Further allegation has been made that she filed a representation against the adverse remarks aforesaid and one of the contentions raised therein was that malafide the Officer Shri G.S. Patel had written the adverse remarks against her. The grievance has further been made that the representation filed by the petitioner against those adverse remarks has also not been decided. The averments made by the petitioner in Para-9 of the Special Civil Application stands uncontroverted.

Merely on the ground of delay in communication of the adverse remarks, the same may not be taken to be malafide or may not be excluded altogether, as it depends

on the facts of each case. However, the fact remains that the representation filed by the petitioner against those adverse remarks has not been decided. The delay in communication of the adverse remarks, though has been made a ground, but when the representation has been filed by the petitioner against those adverse remarks, it was obligatory on the part of the concerned respondent to decide the same, before the same are being used against the petitioner. It is a case where the petitioner would have been given the first promotion and in such matters all caution should be taken by the respondent to see that arbitrarily the candidature of the petitioner for promotion has not been rejected. When the respondents have taken that much of time to communicate the adverse remarks, I fail to see any justification in their action not to decide the representation of the petitioner for all the years to come before 5th January, 1985. They had more than 2-1/2 years time to decide the representation, but still they have not decided the representation and the petitioner has been superseded. Nothing adverse except these two material has been pointed out by the respondent in the service record of the petitioner.

In the result, this Special Civil Application is disposed of with the direction to the respondent No.1 to decide the representation filed by the petitioner against the aforesaid adverse remarks, and in case those adverse remarks are expunged, to consider her case afresh for promotion to the post of Gujarat Vikas Seva Varg-II with reference to the date from which her juniors were given promotion. In case the petitioner is adjudged suitable by the department for promotion, then she shall be entitled for promotion from the deemed date from which her immediate junior has been given promotion. However, she shall not be entitled for the actual promotion benefits, but she shall be entitled for the notional benefits of the promotion. The respondent No.1 is directed to undertake this exercise within a period of three months from the date of receipt of certified copy of this order. While deciding the representation of the petitioner against the adverse remarks, the petitioner may be given an opportunity of personal hearing. It shall be open to the petitioner to file further objections, if any she has against the adverse remarks, within a period of one month from the date of receipt of certified copy of this order. The Special Civil Application and Rule stands disposed of in the aforesaid terms with no order as to costs.

zgs/-